

SERVED: April 16, 1998

NTSB Order No. EA-4657

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of April, 1998

Petition of)

PAUL H. REDER)

for review of the denial by)
the Administrator of the)
Federal Aviation Administration)
of the issuance of an airman)
medical certificate.)

Docket SM-4173

ORDER DISMISSING PETITION FOR REVIEW

On January 9, 1998, the petitioner filed a notice of appeal from the law judge's November 5, 1997 denial of his request for a hearing on his entitlement to a special issuance medical certificate. The Administrator has filed a motion for dismissal of the appeal on the ground that it was not filed within 10 days after service of the law judge's order, as our rules require.¹ We will grant the motion, to which the petitioner filed no

¹ Section 821.47 of the Board's rules of practice provides as follows:

§ 821.47 **Notice of Appeal.**

(a) A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to §821.8) a notice of appeal within 10 days after an oral initial decision or an order has been rendered or a written decision or a final or appealable (see §821.16) order has been served....

answer.²

A late notice of appeal will not be accepted for filing in the absence of good cause. See, e.g., Administrator v. Hooper, 6 NTSB 559 (1988). Although petitioner's counsel filed, along with the late notice of appeal, an affidavit asserting that the law judge's decision was not received in his office until January 2, 1998, no explanation is given for the failure to file, either immediately or in response to the Administrator's motion, a request to have the notice accepted out of time, and, more importantly, no reason appears which would explain or excuse the delay of one week in filing the notice once the law judge's order had been received. Without information to justify that tardiness, we cannot conclude that the late filing is excusable for good cause shown.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The petitioner's appeal from the law judge's November 5, 1997 order is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

² The Administrator's motion also argues that the appeal should be dismissed because it seeks to re-litigate the Board's earlier decision in this proceeding that it lacks jurisdiction to review a denial by the Administrator of a special issuance medical certificate. That decision, the law judge determined, had already been upheld on direct review by the court of appeals, which had remanded the case to the Administrator for development of a record concerning that agency's reasons for rejecting the certificate. Our decision here is limited to the procedural default raised by the Administrator.